

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 872 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

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STATE OF GUJARAT

Versus

CHIMANBHAI BACHUBHAI THADESA

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Appearance:

MR.UMESH TRIVEDI PUBLIC PROSECUTOR for Petitioner

MR RAVI R TRIPATHI for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/09/96

ORAL JUDGEMENT

This Appeal is directed against the judgment and order dated 21.7.1992 passed by the Chief Judicial Magistrate, Amreli in Criminal Case No. 1298 of 1996 whereby the respondent was acquitted of the offences under sections 409 and 468 of the IPC.

The respondent during the relevant period i.e.

1979-80 was working as Talati-cum-Mantri. While he was so working as Talati-cum-Mantri at Gorakhvada he recovered the irrigation dues from the agriculturists of village Lapadia and Gorakhwada. Thus, he recovered a sum of Rs.3043/- from different agriculturist tenants and did not pass on any receipt to them and yet issued no dues certificate to them without depositing the amount so recovered in the state exchequer. Thus, amount recovered by him from the various agriculturists was embezzled by him while working as a Government Servant and he prepared and issued the false no dues certificates and made false entries. On these allegations the respondent was charged for the offences under sections 409 and 468 of IPC. The prosecution has examined 24 witnesses in all. Several witnesses who were agriculturists and tenants of the villages as aforesaid have deposed that they had paid their dues to the respondent but the respondent did not issue receipt on the pretext that the receipt book had exhausted and the same will be given later on. These dues which are said to have been paid by agriculturists were for the year 1979-80 for which the respondent was charged and the sum total of the amount which is said to have been recovered by the respondent from various agriculturists as irrigation dues is Rs.3043/-. Mr. Umesh Trivedi, learned APP has submitted that in view of the statements of the various witnesses who are agriculturists of different villages the offences under sections 409 and 468 of IPC should have been held to be proved against the respondent who at the relevant time was a Government Servant and amount was entrusted to him by agriculturist as part of state revenue. The respondent failed to deposit this amount in the state exchequer who embezzled the same and issued no dues certificates to the agriculturist without depositing the amount in the state exchequer. On the other hand it has been argued by learned counsel for the respondent Mr. Tripathi that in the instant case, the offences cannot be said to have been proved because the witnesses have not deposed with regard to the period subsequent to 1979-80 for which the receipt had been duly passed to them by concerned Talati-cum-Mantri and he has submitted that panchas with regard to the panchnama of the production of the record viz. PW 7 Maganlal Jivrajbhai Vora, PW 8 Nathalal Ranchhodbhai and PW 9 Dudabhai Gobarbhai have turned out to be hostile and thus the panchnamas are not proved. Reference has also been made to PW 18 Mr. Gabhru and he has submitted that on the basis of the deposition made by Gabhru statements of other witnesses are rendered unbelievable. It has also been submitted by Mr. Tripathi that the witnesses have failed to produce the receipts and in absence of any specific deposition with regard to

the period, charge could not be held to be proved and the respondent has been rightly acquitted by the Trial Court and the acquittal does not warrant any interference by this Court.

I have considered the submissions made on behalf of both the sides. In this regard, I may first deal with the deposition made by PW 1 Lavjibhai who is Taluka Development Officer. He has deposed that at the relevant time the respondent had taken the dues from 14 tenants without giving the receipts to the tune of Rs.4,000/- to 5,000/-. He had been asked by the Deputy District Development Officer to lodge the complaint against the respondent and accordingly the report dated 10.9.1982 had been made to the District Panchayat. He has explained the delay with regard to the making of the report to the police and in corss-examination he has given out the procedure with regard to the recovery of the irrigation dues and the procedure for issuance of no dues certificate, demand notice etc. He has stated that the revenue year commences from 1st week of August and it extends upto 31st July. Dues against the tenants are decided by the Irrigation Department and if there are any dues the demand notice are sent to the Taluka Panchayat and in turn Taluka Panchayat sends demand notice to the Talati. He has further deposed that except the demand notice Talati has no record with regard to the dues of the tenants on account of the irrigation. He has also deposed that he does not know as to whether the demand notice had been sent to the present respondent who was working as Talati and the water for irrigation is supplied to the agriculturist only after the dues of the previous year are paid. The tenants are also required to fill up the forms for that purpose and they have to enclose no due certificate along with it and such no dues certificate is issued by the Talati and in case no demand notice in respect of any agriculturist is pending with the Talati he proceeds to issue no dues certificate. In other words if there is no demand notice with regard to particular agriculturist the Talati rightly issues no due certificate. The Deputy District Development Officer of Amreli District Panchayat has been examined as PW 23 who has stated that he had instructed the Taluka Development Officer, Amreli to file criminal case against the respondent-Accused. PW 3, Pw 4 and PW 5 have not deposed against the respondent with regard to the period 1979-80 and they had stated that they had paid dues for the year 1980-81 to Kantibhai. The receipt which was passed on to them by Shri Kantibhai has not been produced and these witnesses have not stated that they had to pay dues second time for the same period. The statements made by

PW 6 are also absolutely vague and do not refer to the particular period of 1979-80. PW 10 Kantibhai who succeeded the respondent as Talati cum Mantri at village Gokharwada and who was working as such from 12.6.1981 to 27.1.1982 has stated that he did not receive record of the year 1979-80 in the charge and he had made demand of this record from the concerned taluka. He has stated that applications of the agriculturists for supply of water had been accepted only after verification of the previous dues and he has referred to exhibits 15, 16, 18, 21 and 26. He has stated that he did not say about the dues against the tenants for previous years and he was not in a position to say with regard to it without going through the record and he had made the statement because he had seen signatures of the respondent in the record. PW 11 who was posted at Gorakhwada as Talati cum Mantri in December, 1986 has also not deposed anything in particular against the respondent and has said that he could not identify the signatures which were there in the various exhibited items of the record. He has also stated that unless demand notice is received Talati cannot know as to whether there were any dues against any particular tenant or not. PW 12 Manshankar who was working as Senior Clerk has stated that one receipt book was issued to the respondent on 24.10.1979 and the other was issued on 10.11.1980 and yet another receipt book was issued on 14.11.1980 to the respondent and all these receipt books had been returned. PW 13 Kadavabhai has stated that he does not remember that the amount of Rs.1,000/- which he had deposited with Kantibhai was with reference to which year. In short there is nothing specific against the respondent. In his statement as also in the statements of the other witnesses PW 14, PW 15, PW 16, PW 17 and PW 19 nothing has been said with regard to the payment of the dues for the year 1979-80. Some of the witnesses have said that certain amount was paid to the respondent but they have not been able to say anything with regard to the period in question. PW 20 has deposed that he had paid certain amount to the respondent. The receipt had not been given but he has said that it was not correct that he had to pay the same amount for the second time. PW 21 and PW 22 are police employees and they have not deposed anything against the present respondent. PW 23 is concerned P.S.I., Amreli (Rural) and has investigated the case. He has deposed with regard to the investigation. He has stated the preparing of the panchnama with regard to the production of records but in cross-examination he has also stated that if there are dues of the previous year the irrigation water is not supplied in the next year. He had stated that details about the dues are sent by

panchayat to the Talati cum Mantri and the agriculturists have to obtain no dues certificate. Talati keeps record and the form of supply of irrigation of water is prepared after the irrigation department writes to the Talati and the details of the dues are sent by Talati to the Irrigation Department. PW 24 is again the P.S.I. who had taken the note of investigation and had recorded the statements of certain witnesses after 19.4.1988. PW 7, PW8 and PW9 are the panch witnesses who were declared hostile and PW 18 has also not supported the case of the prosecution. The documents exhibits 16, 15, 18 and exhibits 21 to 24 and exhibits 26 and 27 are the forms which are filled up by the agriculturists and in these forms last column shows the period 1980-81. It is a fact that the demand notices have not been produced. The witnesses who have orally deposed against the respondent that the revenue had been paid to the respondent but the receipt had not been given to them have not deposed that they had to pay the same amount for the second time and simultaneously they have also deposed that they did get irrigation water supply in the succeeding years which could not be available to them unless they were able to produce no dues certificate. Nothing has been produced on the record by the prosecution to show that the respondent had issued no due certificate to any of the agriculturists with regard to whom any notice, demand notice was pending with him as sent by the concerned authorities and the prosecution has also failed to show that the record with regard to the dues was maintained in the office of Talati cum Mantri i.e. respondent. Thus, all that has come against the respondent -accused is oral statement made by certain agriculturist-tenants and that too is not specific with regard to the period and in absence of their grievance that water supply to them was denied in next years it cannot be said that the respondent had embezzled the amount and whereas relevant record with regard to any of the entries said to have been made by the respondent have not been produced it cannot be said that the offence of 409 stands proved against the respondent. Oral depositions made by the witnesses by agriculturists as aforesaid does not find any corroboration from any contemporaneous documentary evidence and therefore I find that the prosecution has failed to bring the guilt home to the Accused. So far as the question of making any false entries and issuing false no dues certificates is concerned, it is clearly made out that no such no dues certificates have been produced nor any demand notice has been produced and proved and therefore it cannot be said that the respondent has committed any offence under section 468 IPC also.

In nutshell, the prosecution has failed to produce the relevant record for the purpose of proving the offence under sections 409 and 468 IPC and in the facts and circumstances of the case and on the basis of vague statements made by certain agriculturists without reference to any particular period in absence of any contemporaneous evidence the respondent cannot be held to be guilty and in my considered opinion the order of acquittal passed by the Trial Court acquitting the respondent from the offences under sections 409 and 468 IPC does not warrant any interference, the Appeal is therefore dismissed.

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